STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NORMAN K. SMALL,

Defendant-Appellant.

UNPUBLISHED
October 26, 2001

No. 224913
Wayne Circuit Court
Criminal Division
LC No. 99-000126

Before: Holbrook, Jr., P.J., and Cavanagh and R. S. Gribbs*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, and carjacking, MCL 750.529a. He was sentenced to concurrent prison terms of seven to fifteen years for each conviction. He appeals as of right. We affirm.

I

Defendant first claims that he was denied his right to present a defense and to confront witnesses because the trial court precluded him from questioning the victim with regard to his lawful possession of the motor vehicle. We conclude that the trial court did not abuse its discretion in determining that the proffered evidence was not relevant. MRE 401; *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

The right to present a defense is not absolute. See *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984); *People v Arenda*, 416 Mich 1, 8; 330 NW2d 814 (1982). Here, we reject defendant's claim that lawful possession is an essential element of carjacking. The carjacking statute, MCL 750.529a(1), provides:

> A person who by force or violence, or by threat of force or violence, or by putting in fear robs, steals, or takes a motor vehicle as defined in section 412 [MCL 750.412] from another person, in the presence of that person or the presence of a passenger or in the presence of any other person *in lawful possession* of the motor vehicle, is guilty of carjacking, a felony punishable by imprisonment for life or for any term of years. [Emphasis added.]

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Our primary goal in construing this statute is to give effect to the Legislature's intent. *People v Stephan*, 241 Mich App 482, 496; 616 NW2d 188 (2000). As a rule of statutory construction, "a modifying clause or phrase will be considered as modifying only the last antecedent unless something in the subject matter or dominant purpose requires a different interpretation." *People v Ward*, 211 Mich App 489, 491; 536 NW2d 270 (1995). Under this rule of construction, the phrase "in lawful possession" only modifies the phrase "the presence of any other person." It does not modify the alternatives "presence of that person" and "presence of a passenger."

Furthermore, carjacking is a general intent crime, the purpose of which is to punish a "person's voluntary act of using force or fear to take another person's vehicle." *People v Davenport*, 230 Mich App 577, 581; 583 NW2d 919 (1998). Like armed robbery, MCL 750.529, the carjacking statute is part of the robbery chapter of the Michigan Penal Code. See *People v Green*, 228 Mich App 684, 696; 580 NW2d 444 (1998). Looking to the manner in which the armed robbery statute was construed in *Green* for guidance, when examining the "taking" element of the carjacking statute in light of both the purpose and subject matter of the statute, we find no basis for concluding that it was the intent of the Legislature to require that the person from whom a motor vehicle is forcibly taken be in lawful possession of the vehicle.

Consistent with *Green*, the requisite taking should be defined in terms of possession, the hallmark of which is dominion and control. *Id*. at 695-696. "A defendant 'takes' a motor vehicle 'from' another person when he acquires possession of the motor vehicle through force of violence, or by putting another in fear." *Id*. Although in *Green* this Court was not presented with the question of who may constitute "another person," the armed robbery statute has long been construed as not requiring legal title as a necessary element for a conviction. See *People v Needham*, 8 Mich App 679, 683; 155 NW2d 267 (1967). It is enough that the person has a superior right to possession over the defendant. *Id*.; People *v Jones*, 71 Mich App 270, 272; 246 NW2d 381 (1976). A person with illegal possession of property has a greater right of possession over his assailant. *Needham*, *supra* at 685. "The very fact that the property is taken from a person by the use of firearms, violence or threatened violence is, within itself, sufficient to show that the person from whom it was taken was in possession thereof." *Id*. at 683-684, quoting *Barfield v State*, 137 Tex Crim 256; 129 SW2d 310, 313 (1939).

Accordingly, we conclude that the Legislature did not intend to require legal possession as a requisite to all carjacking convictions. Because the prosecutor's theory in this case was based on a taking "from another person, in the presence of that person," MCL 750.529a(1), we reject defendant's claim that the evidence was insufficient to support his carjacking conviction. See *People v Lemmon*, 456 Mich 625, 633-634; 576 NW2d 129 (1998). It was not necessary to prove legal possession and, conversely, the proffered evidence would not have established that defendant had a superior right to possession of the motor vehicle; therefore, the trial court did not abuse its discretion in ruling that the evidence was irrelevant.

Defendant next claims that the trial court erred by preventing defense counsel from cross-examining the victim about his recent arrests. Defendant argues that defense counsel should

have been allowed to cross-examine the victim about why he had an interest in concealing his identity.[1]

Defendant has not shown that the trial court abused its discretion in limiting the scope of cross-examination of the victim. See *Lukity*, *supra* at 488; *People v Morton*, 213 Mich App 331, 334; 539 NW2d 771 (1995). We acknowledge that evidence of arrests that do not result in a conviction may be relevant to show a witness' bias or interest. See *People v Layher*, 464 Mich 756; 768; 631 NW2d 281 (2001). Here, however, defendant did not make an offer of proof in order to establish the relevancy of the information in question with regard to the victim's potential for bias or interest in the case, see MRE 103(a)(2); *People v Hackett*, 421 Mich 338, 352; 365 NW2d 120 (1984), nor is that purpose plainly apparent from the record. Therefore, appellate relief is not warranted. See MRE 103(d); *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The trial court's initial ruling to grant the prosecutor's motion in limine to exclude evidence of arrests was not met with any offer of proof by defense counsel concerning the relevancy of arrest information. The subsequent ruling of the trial court, which defendant points to for purposes of his claim on appeal, concerned cross-examination regarding the victim's admitted use of an alias, not his prior arrests. Although the purpose for which an alias is employed may be relevant in assessing a witness' credibility, *People v Thompson*, 101 Mich App 609, 614; 300 NW2d 645 (1980), it is distinct from the use of arrest information to show a witness' bias or interest in the outcome of the criminal case. Here, the record reflects that the trial court, over the prosecutor's objection, allowed defense counsel to cross-examine the victim about why he used his brother's name, but sustained the prosecutor's relevancy objection to further cross-examination offered by defense counsel to clarify the victim's response that he was "investigating" a pending case in the State of Mississippi. Examined in the context of the offer of proof made by defense counsel on the need for clarification, we conclude that defendant has not established that the trial court abused its discretion. See *Morton*, *supra* at 334. Furthermore, even if the trial court's decision could be characterized as an abuse of discretion, we would decline to reverse because we are satisfied that any error in this regard was harmless beyond a reasonable doubt. See *People v Toma*, 462 Mich 281, 296-301; 613 NW2d 694 (2000); *Carines*, *supra* at 774.

III

Finally, defendant claims that the evidence was insufficient to establish beyond a reasonable doubt that he intended to commit murder. We disagree. The requisite intent to kill "may be proven by inferences from any facts in evidence." *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Although the stab wound to the victim's chest was not successful in causing the victim's death, the evidence on the type of weapon used, the location of the stab wound, and the other surrounding circumstances, viewed in a light most favorable to the

[1] In considering this issue, we have not considered the newspaper article attached to defendant's brief because this document was not submitted in the trial court. See *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487 (1990).

prosecution, was sufficient to enable a rational trier of fact to infer an intent to kill beyond a reasonable doubt. See *Lemmon*, *supra* at 633-634.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh
/s/ Roman S. Gribbs